HON'BLE SRI JUSTICE N.R.L. NAGESWARA RAO

CRIMINAL APPEAL NO. 1616 OF 2004

JUDGMENT:

This Appeal is filed by the State challenging the acquittal of the accused in C.C.No. 7 of 2003, on the file of Special Judge for C.B.I Cases at Visakhapatnam.

The case of the prosecution is that the accused is working as Junior Attendant E-1400-16 RIG, Oil and Natural Gas Corporation Limited (for short 'the ONGC') at Rajahmundry since 1998. During the year 2002, he met PW-3 and claimed that he is a Civil Engineer and that some posts were notified in the ONGC. PW-3, in turn, introduced the accused to PW-12. The accused by misrepresentation has collected money from PWs 1 to 4 on the pretext of providing employment to them and demanded a sum of Rs. 16,750/- from each of them and subsequently it was revealed that there are no vacancies and on 3.7.2002 a surprise check was conducted by the Officials of the Vigilance

Department of the ONGC and also by the CBI. The accused has given an extra-judicial confession before the surprise check of the officials of the ONGC. A sum of Rs. 61,800/- was seized from the Bank of the accused. It is also further alleged that the accused said to have taken money from several persons to a tune of Rs. 2,58,000/- on the pretext of providing jobs and he has returned a sum of Rs. 44,000/- to PW-7. Therefore, the accused indulged in an act of cheating and abusing his official position. Consequently, after obtaining sanction, the accused was prosecuted for the offences under Sections 419, 420 IPC and Section 13 (2) r/w 13(1) (d)(i)(ii) of Prevention of Corruption Act. The accused pleaded not guilty.

On behalf of the prosecution, PWs 1 to 17 were examined and Exs P1 to P-17 were marked. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C. The learned Special Judge, after considering the evidence on record, found the accused not guilty and acquitted.

Challenging the said acquittal, the present appeal is filed.

Points that arise for consideration are:

(1) Whether the accused is guilty of criminal misconduct and induced persons to part with money on the promise of providing jobs, thereby cheated?

(2) Whether the judgment of the Court below in acquitting the accused is legal and sustainable?

In support of the prosecution case, PW-1 deposed that his father paid a sum of Rs. 5,000/- to the accused on 1.7.2002 as the accused represented that he will get him appointed as LDC in the ONGC if a sum of Rs. 16,750/- is paid. He claimed to have given a complaint to the police on 9.7.2002. The amount was returned under Ex. P-2 in the presence of PW-13, who is an Advocate at Rajahmundry. According to him, Meduri Subramanyam, PW-12 is his cousin and PW-2 is also his cousin and it was PW-12, who has introduced the accused to him and therefore, the transaction has taken place. So also, the

evidence of PW-2 goes to show that he paid a sum of Rs. 16,750/- to the accused as he promised to provide a job. His evidence does not show as to when exactly he gave money. He admits that PW-12 is his cousin brother and the amount is said to have been returned under Ex. P-3. The evidence of PW-3 is that in the last week of June 2002, the accused visited the Temple where he has met an Archaka at Palakollu and claimed as a Civil Engineer and informed that there are three vacancies and for each post a sum of Rs. 16,750/- was to be paid. On 2.7.2002, he claims to have realised from PWs 1 and 2 that the whole issue was a fraud. On 3.7.2002, he went to Yenuguvanilanka, where a statement was recorded. He claims to have given a sum of Rs. 16,750/- for the employment of one J. Aswinidath and the said amount was returned under Ex. P-6. His evidence does not show as to when exactly this amount was paid. The evidence of PW-4 is that on 1.7.2002, he went to the accused and paid a sum of Rs. 15,000/-

as the accused promised to provide employment and on 3.7.2002 the CBI people questioned and he gave the statement. He claims to have received the amounts under Ex. P-8.

The evidence of PWs 5 to 7 is about an earlier transaction, which is not a part of the charge against the accused. The evidence of PW-8 is about the accused giving Ex. P-12 confessional statement voluntarily on 3.7.2002 and he was the Chief Engineer and thereafter, the CBI people conducting a joint search and recovering money from the Bank of the accused. The evidence of PW-10 is also about the alleged confession. The evidence of PWs 9 and 11 is about the seizure of the amount from the Bank of the accused under Ex. P-11. The evidence of PW-12 is that he is an Archaka of a temple of Palakollu and in the month of July 2002, the accused visited the temple and PW-3 introduced the accused to him. For four days he performed poojas for the accused and the accused told him that he was working as Civil Engineer and there are two vacancies in the

ONGC and a sum of Rs. 16,750/- is necessary for each post. Accordingly, he told the same to PWs 1 and 2. Five or Six days later, he along with PWs 1 and 2 went to the site and the CBI people were present and his statement was recorded. According to him, PWs 1 and 2 paid the amounts to the accused. The evidence of PW-13 is that he is practising as an Advocate and under Exs P-2, P-4, P-6 and P-8, receipts, the accused has returned the money. The evidence of PW-16 is about the investigation in this case.

The learned Special Judge found that there is no material to show that the accused claimed as a Civil Engineer and consequently the theory of the prosecution about the inducement is not probable. The learned Judge also found that the important witnesses i.e., Eranki Satyanarayana, Meduri Subrahmanyam, M. Suryanarayana Murthy and Savithala Venugopala Krishna @ Venubabu, were not examined and therefore, the accused cannot be said to have misrepresented or impersonated.

The learned Public Prosecutor contends that, in fact PW-12, Meduri Subrahmanyam, was examined and the Lower Court did not properly read his evidence. Even otherwise, the evidence of PWs 1 to 4 is quite clear and conclusive about the payment of money to the accused on his promise of providing employment and the said money was recovered and it was repaid and therefore, the Lower Court erred in discarding the evidence of PWs 1 to 4. So also, it is his contention that Ex. P-12 is a voluntary confessional statement even before the CBI Officials and Police came, wherein he admitted to have received money from PWs 1 to 4 and therefore, it is a best piece of evidence supported by the evidence of PWs 1 to 4 and the acquittal of the accused is not proper.

On the other hand, it is the contention of the counsel for the accused that the evidence of PWs 1 to 4 is too vague and when the money paid is not mentioned and from the evidence of PW-12 itself the falsity of the prosecution case is established and when the money is said to

have been seized under Ex. P-13 on 3.7.2002, the repayment of the same on 9.7.2002, in the presence of PW-13, cannot be believed. Therefore, according to him, this being an appeal against acquittal and when the reasoning and finding of the Court below is not perverse and there are no compelling circumstances to differ with the reasoning, this Court cannot interfere with the judgment of the lower court.

It is to be noted that it is of less relevance as to whether the accused has really claimed to be a Civil Engineer or not since his employment as a public servant in the ONGC is not in dispute. Therefore, even if an attender has indulged in false promises and induces persons to part with money, the guilt of the accused has to be taken into consideration.

The essential thing now to be considered by this Court is whether the evidence of PWs 1 to 4 and the evidence of PW-12 is to be accepted or not? Before that, it is to be noted that on 3.7.2002, the Joint Inspection is said to have been conducted and Ex. P-13 proceedings

were drafted. The Joint Inspection Report clearly goes to show that these monies by PWs 1 to 4 were paid on 2.7.2002. In fact, as per the evidence of PW-11, PWs 1 to 4 and accused are alleged to have stated about the payment of the money on the night of 2.7.2002. Therefore, it is quite clear that immediately on the day next, the complaint was given and Joint Inspection was done. The evidence of PW-1 shows that his father paid a sum of Rs. 5,000/- to the accused on 1.7.2002. The evidence of PW-2 is silent about the date of payment. The evidence of PW-3 is also silent as to when the money was paid. The evidence of PW-4 is also clear that on 1.7.2002 he paid the money to the accused. Therefore, there is a serious and material variation with regard to the date of payment of money to the accused. Furthermore, according to the prosecution, all this has started when the accused has visited the temple of PW-12, and there he has informed his position and also availability of the posts in the ONGC. According to the specific evidence

of PW-12 and PWs 1 and 2, it was PW-12, who has informed about the posts to the accused. The evidence of PW-12 clearly goes to show that in July 2002, the accused came to his temple and he performed pooja for 4 or five days and then the accused stated that there are vacancies in the ONGC and consequently informed the same to PWs 1 and 2. By any stretch of imagination, it cannot be taken that on 1.7.2002 or on 2.7.2002 the accused could have informed PW-12 about the posts and immediately PW-12, in turn, informed PWs 1 and 2. Thus, the prosecution case suffers from serious infirmity. Furthermore, the evidence of PW-12 goes to show that five or six days later along with PWs 1 and 2, he went to the site and the CBI people were present. Evidently, the CBI has conducted a joint search on 3.7.2002. If his evidence that performance of pooja for four days is to be believed, and the version of PWs 1 and 2 is to be accepted, then it can only be after 2.7.2002 or 3.7.2002. Therefore, though the Lower Court has failed to take notice of the fact that PW-12 was examined, I have no

hesitation in holding that the evidence of PW-12 does not appear to be credible and consequently the prosecution case was at the instance of PW-12, on a false representation made to PW-12 by the accused, PWs 1 and 2 have parted the money, cannot be accepted as true.

Furthermore, if on 3.7.2002 the money which is said to have been paid by PWs 1 to 4 was recovered, under Ex. P-13, there is no reason as to how and why, again the accused should repay the amounts to PWs 1 to 4 in the presence of PW-13. There is no ambiguity in the evidence of persons connect with Ex. P-13, to the effect that what was seized was the money given by PWs 1 to 4. But this is an unnatural circumstance, which gives any amount of benefit of doubt to the accused.

So far as the confessional statement is concerned, under Ex.P-12, it was very simple and it refers to the receipt of money from 4 persons and it has to be noted that it is said to have been given on the same day when the CBI

people have gone to the site. The attestors on Ex. P-12 and Ex. P-13 are almost similar when the rigging charge and drilling charge have received. Had Ex. P-12 been really given prior to Ex. P-13, they would not have failed to mention about this confessional statement in Ex. P-13. On the other hand, Ex. P-13 shows that the accused was questioned for the first time at the time of surprise check and has given the admission. Therefore, Ex. P-12 is surrounded by suspicious circumstances and it cannot be taken as extra-judicial confession voluntarily to prove the guilt of the accused though the charge-sheet discloses that merely Rs. 2,58,000/- was collected from several persons and all of them were not examined and no charge was also framed relating to that.

Therefore, in view of the above circumstances, I do not find any valid or compelling reasons to differ with the acquittal recorded by the Court below and there are no merits in the appeal and accordingly the Criminal Appeal is dismissed.

N.R.L. NAGESWARA

RAO,J

DATE: .06.2012
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